

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EUGENE SCHLUSSLER, JR.,

Plaintiff,

v.

OPINION AND ORDER

19-cv-261-bbc

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

On September 23, 2019, I granted the parties' joint motion to remand this case for further proceedings before an administrative law judge, pursuant to sentence four of 42 U.S.C. § 405(g). Dkt. #12. On November 13, 2019, I granted plaintiff Eugene Schlusser, Jr.'s unopposed motion for attorney fees under the Equal Access to Justice Act and awarded fees in the amount of \$3,379.25. Dkt. #19. Now before the court is a motion filed by plaintiff's counsel, Dana Duncan, for attorney fees, following a favorable decision from the administrative judge on remand. Dkt. #20. The commissioner does not oppose the motion. Dkt. #22. (I have revised the caption to reflect the fact that Andrew Saul is now the commissioner of Social Security.)

Counsel reports that he and plaintiff have a contingency fee agreement providing for attorney fees amounting to 25 percent of an award of past-due benefits. On remand, the administrative law judge awarded past-due benefits from which the Social Security Administration withheld 25 percent or \$14,274.00 for attorney fees. Counsel has submitted an accounting showing 11.9 hours in attorney time and 12.15 hours in paralegal time spent on plaintiff's case in this court. Pursuant to 42 U.S.C. § 406(b), counsel requests an order awarding a fee for court work in the amount of \$3,120.75 (equal to \$14,274.00 less the previously

awarded EAJA fee of \$3,379.25 and \$7,774.00 in fees sought administratively) to be payable out of plaintiff's past-due benefits.

The requested fee is within the statutory cap and the parties' contingency fee agreement, but the court must nevertheless review it to be sure that it is reasonable in light of the character of the representation and the results obtained; the time, labor, and skill required; the attorney's experience, reputation, and ability; and awards in similar cases. Gisbrecht v. Barnhart, 535 U.S. 789, 807-09 (2002); McGuire v. Sullivan, 873 F.2d 974, 979-83 (7th Cir. 1989). Here, the requested award is reasonable. Counsel seeks a total of \$6,500 in attorney fees (the previously awarded EAJA fee of \$3,379.25 plus the additional \$3,120.75 in 42 U.S.C. § 406(b) fees) for 24.05 hours of work (11.9 attorney hours and 12.15 paralegal staff hours), for an overall average hourly rate of approximately \$270. (Attorney Duncan does not identify the specific hourly rate paid for attorney and paralegal work, but presumably the attorneys were paid at a higher rate than the paralegals.) District courts in this circuit have awarded representative fees that reflect hourly rates as high as \$400 to \$1,500. Koester v. Astrue, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing). See also Richlin Secretary Service Co. v. Chertoff, 553 U.S. 571, 581 (2008) (reasonable attorney fees under EAJA includes paralegal time); Beach v. Berryhill, No. 14-cv-857-bbc, 2017 WL 3275546, at *2 (W.D. Wis. Aug. 1, 2017) (awarding \$200 an hour for paralegal work). Counsel is an experienced attorney who represented plaintiff in this court, reviewed the administrative record, drafted a motion for summary judgment and prompted and negotiated a stipulated remand, which resulted in a favorable determination below. In addition, defendant does not oppose the motion. Accordingly, I will grant counsel's

motion for attorney fees in the amount of \$6,500, from which \$3,120.75 shall be paid directly to Attorney Duncan and \$3,379.25 shall be returned to plaintiff.

ORDER

IT IS ORDERED that the motion for attorney fees filed by plaintiff's attorney, Dana Duncan, pursuant to 42 U.S.C. § 406(b), dkt. #20, is GRANTED. The court approves a representative fee award of \$6,500, from which \$3,120.75 shall be payable to Dana Duncan out of the statutory fee withheld from plaintiff Eugene Schlusser, Jr.'s past-due benefits. The remaining \$3,379.25 of the award shall be paid directly to plaintiff Eugene Schlusser, Jr.

Entered this 22d day of December, 2020.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge